

## **ECRE Comments to the Commission Communication on the Global Approach to Migration and Mobility COM (2011) 743 final**

### **Introduction**

On 18 November 2011 the Commission published a Communication on the Global Approach to Migration and Mobility (hereinafter GAMM), accompanied by a Staff Working Document on Migration and Development. The first part of this paper discusses the overall GAMM approach, its premises and tools, while the second examines more specifically the way in which refugee protection is accommodated within this framework.

Cooperation with third countries in the area of migration has been on the table since Tampere, but it was only at the December 2005 Council meeting under the UK Presidency that the Member States adopted a dedicated policy framework for it, the Global Approach to Migration (GAM).<sup>1</sup> 2005 was the year of Ceuta and Melilla, incidents that brought the Union face to face with the challenge of migration beyond its borders and the need to work together with third countries. Initially focusing on Africa, the GAM aimed to place migration control into a broader migration management framework that includes also labour migration and migration and development. The Rabat and Tripoli Processes of 2006 were also part of the same political momentum.<sup>2</sup> Over the next years the GAM was complemented and strengthened through various Communications and Council Conclusions that broadened its geographical scope and made it more concrete through tools such as migration profiles, migration missions, cooperation platforms, and mobility partnerships<sup>3</sup>. One of the GAM's main features has been its structure on the basis of 'migration routes' from regions East and South towards Europe. Essentially a Euro-centric understanding of migration, global and regional migration challenges were seen from the viewpoint of how much they eventually affect

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<sup>1</sup> The Council welcomed the Communication COM (2005) 621 *'Priority Actions for Responding to the Challenges of Migration first follow up to the Hampton Court,'* and adopted the *'Global Approach to Migration: Priority Actions on Africa and the Mediterranean'*, annexed to the Presidency Conclusions of the European Council 15/16 December 2005.

<sup>2</sup> The first Euro-African Conference on Migration and Development held in Rabat in July 2006 resulted in a Declaration and an Action Plan for cooperation between Europe and primarily West-African countries. A second conference took place in Paris (2008) and a third in Dakar (2011) each agreeing on a three-year cooperation programme. The Ministerial Conference on Migration and Development (covering the entire continent) held in Tripoli in November 2006 resulted in a Joint EU-Africa Declaration on Migration and Development, which was then followed up by the EU-Africa Partnership for Migration, Mobility and Employment (MME) adopted by the EU-Africa Summit in Lisbon in December 2007.

<sup>3</sup> COM (2006) 735, *The Global Approach to Migration one year on: towards a comprehensive European migration policy*, COM (2007) 247, *Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union*, SEC (2007) 1632, Commission Staff Working Document *'Interim Progress report on the Global Approach to Migration'*, COM (2008) 611 *Strengthening the Global Approach to Migration: increasing coordination, coherence and synergies*, COM (2007) 248 final *Communication on circular migration and mobility partnerships between the European Union and third countries*, Commission Staff Working Document *Mobility partnerships as a tool for the Global Approach to Migration SEC (2009) 1240 final*; see also *Stockholm Programme*, 2 December 2009, Council of the European Union 17024/09.

Europe, while South-South migration has always remained limited.

Six years later, it is again North Africa that triggers the debate. Foreseen in the Stockholm Programme Action Plan, the GAMM Communication has been presented also in conjunction with the Communications on the Southern Mediterranean and Europe's response to a changing Neighbourhood of the same year.<sup>4</sup> In a way, this fact in itself shows the neighbouring countries' primary importance in migration and asylum issues, but also that past bilateral and regional cooperation and the GAM have not gone very far with regards to this region. At the same time, all these Communications have been triggered by the momentum created by the Arab Spring; the sociopolitical changes in North Africa are monumental and provide a new and promising political environment and an obligation for the EU to stand up to its role as cooperation partner.

## A mobility framework

Responding to this challenge, the Commission has chosen to structure the GAMM around the concept of **mobility**. Moving away from the 'migration routes', the Global Approach aims to be mobility-oriented and differentiated in its offer to partner countries. This is definitely more Euro-centric, and targets primarily European labour markets with a view to creating stronger links with Europe's agenda for growth and competitiveness by 2020 (Agenda 2020). To some extent, the emphasis on labour migration shows pragmatism. Whether it will actually succeed in curbing irregular migration however is uncertain, and will depend on the type of legal migration opportunities on the table, Member States' commitment and the degree to which policies also reflect the needs of third countries. Moreover, the new approach is based on a migration control logic as much as the previous version of the Global Approach.

In practice, the GAMM will feature **Migration and Mobility Dialogues** with third countries that can lead to a two-speed cooperation system; for countries ready to commit in readmission and migration management, the dialogue will lead to a **Mobility Partnership** that offers visa facilitation and is backed up by a 'support package' of capacity building and information exchange. For countries not yet ready to commit, it will be a simpler **Common Agenda for Migration and Mobility (CAMM)**, with common recommendations, targets and commitments, and a similar 'support package'.

In practice, both types of dialogues are non-binding political declarations, where Member States join voluntarily. Mobility Partnerships are not new; the existing ones with Cape Verde, Moldova, Armenia and Georgia are a mixture of political dialogue and project(s) between the country and a grouping of Member States. It may be premature to assess the impact of these Mobility Partnerships, but what is clear already is that commitment from the side of the Member States in terms of opening up their labour markets remains limited. If a Mobility Partnership is about labour mobility between Europe and the partner country, it needs to translate into a strategy that links to national labour markets and job offers. In order to have an impact, Mobility Partnerships need to touch a broad base and not just the skilled and highly skilled migrants, and respond to labour migrants' aspirations for better employment opportunities, increased incomes, skills acquisition, equal treatment, and rights.<sup>5</sup> They need to serve not just Europe's labour market gaps, but the partner countries' broader development objectives. At the same time, their impact also depends on the extent to which partnerships will have a more comprehensive scope than just mobility, addressing a range of migration issues that affect a third country. Some of this is already in the Communication, but it does not appear too strong. As far as CAMMs are concerned, there is some political value to the fact that countries will discuss and subscribe to a set of agreed

<sup>4</sup> COM (2011) 200 final, *A Partnership on Democracy and Shared Prosperity with the Southern Mediterranean*, COM (2011) 303 *A new response to a changing Neighbourhood*

<sup>5</sup> See also Cassarino, J-P., *Readmission Policy in the European Union*, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Civil Liberties, Justice and Home Affairs, Brussels, European Parliament, 2010.

recommendations, but being non-binding and without anything on offer, they are unlikely to have a major impact.

In the new GAMM, the three **priorities** of the Global Approach are maintained (promoting labour migration, addressing irregular migration, and enhancing the links between migration and development) and now complemented by a fourth one, refugee protection, discussed in detail below. The GAMM aspires to be Europe's '*overarching framework for external migration policy, complementary to foreign policy and development*'. One of the Global Approach's inherent difficulties from the start has been that it tries to reconcile policies that are diverging: it is not an internal policy because it targets actions in and with third countries; at the same time, it is not an external relations and development policy, because it aims to satisfy EU migration management objectives. It tries to reach out to both, without being any of the two. As a result the GAM is often interpreted differently by the various actors, as well as by researchers. What is more, this ambiguity has inevitably led to a loose framework that is too informal to have an impact, and takes the shape of projects rather than policies.

A particular weakness of the GAM has been the lack of emphasis on promoting and protecting the rights of persons on the move. The GAMM Communication now argues for a migrant-centred approach, but this element is rather weak and does not really transpire from the text. 'Migrant-centred' here seems to mean that migrants gain access to controlled mobility. The GAMM should go one step further and argue for a **rights-based approach to migration**, especially regarding the protection of the rights of vulnerable groups and their families on the move or living in third countries.

ECRE welcomes the reference to make the human rights of migrants a cross-cutting theme for the GAMM and believes that this is a positive step. A rights-based approach to migration in the GAMM should also mean much more. It should mean that political dialogues and the programming of actions under the GAMM in the four priority areas are guided by human rights principles. Migration and mobility dialogues should be closely associated with human rights dialogues and human rights strategies at country level, and Member States and partner countries should comply with legal norms and standards enshrined in international human rights instruments. It means that migrants and refugees are seen as active agents who can claim their rights. Addressing irregular migration should be seen from the perspective of human security rather than securitisation. The European External Action Service (EEAS) should play a leading role in promoting a rights-based approach to migration coherent with foreign policy and development in third countries in the areas of human rights, democratisation and good governance.

ECRE believes that Europe should develop and promote a rights-based approach to migration policy, which should be nested in both internal and external policies. The EU should position itself as a global player in international migration governance.

## **GAMM with conditions**

Already in 2008, the GAM Communication suggested that **readmission agreements** should be integral to the Global Approach and this was also echoed in the Communication on the evaluation of readmission agreements (2011) and the Council Conclusions on readmission of May 2011.<sup>6</sup> Cooperation on readmission in return for labour migration has also been put forward in the

<sup>6</sup> COM (2008) 611, COM (2011) 76 final *Evaluation of Readmission Agreements*, Draft Council Conclusions defining the European Strategy on readmission, Brussels 27 May 2011

Immigration and Asylum Pact (2008).<sup>7</sup> At the same time, neighbourhood policy also sees visa facilitation generally as a *quid pro quo* for cooperation in migration management. Following on all these steps, the GAMM Communication now places readmission agreements together with visa facilitation at the centre of its Mobility Partnership architecture. Instead of being negotiated separately, readmission is now merged into a migration 'package', in order to sell better and to have more incentives at hand. It is presumably hoped that this will unblock readmission negotiations specifically with the Southern neighbours, which unlike the Eastern neighbours have so far proven unwilling to conclude readmission agreements with the EU.<sup>8</sup>

ECRE underlines that the EU and Member States should first and foremost consider **the human rights situation and the availability of a well-functioning asylum system** in the third country before entering into negotiations and implementing readmission agreements with that country.<sup>9</sup> Concerns are also expressed with regards to the way in which readmission agreements are often implemented. There should always be safeguards against refoulement for persons whose rights or life may be at risk, be it nationals of the country or third country nationals. Readmission agreements should not present an obstacle to people who need to seek asylum in Europe.

It is not clear whether this new generation of readmission agreements within Mobility Partnerships will follow the standard model of agreements, as adopted by the Council (1994) and used by the Community so far, or whether it will be an adapted version built into the Mobility Partnership declaration. In any case, the 'non-attraction clause' with regards to the parties' obligations arising from international law should always be included in such agreements. A suspension clause should also be included in the event of serious risk of violation of human rights of the admitted person, as suggested in the Communication on the evaluation of readmission agreements.<sup>10</sup> Further safeguards should be placed as conditions in the Mobility Partnerships with regards to the treatment of readmitted third country nationals upon return. Besides, the Mobility Partnership and readmission agreement will need to be coherent with the migration clause in the framework, association or cooperation agreement concluded between the EU and third country concerned.

Reference is made in the GAMM Communication to '**benchmarks that need to be fulfilled by the partner countries in areas such as asylum, border management and irregular migration**' before visa liberalisation or facilitation is considered.<sup>11</sup> ECRE acknowledges that this can be an important step forward in pushing for better protection standards in third countries. International law already sets minimum standards to ensure refugees' basic rights and it is essential that any benchmark of effective protection used by the EU, and the principles on which these are based, include international human rights standards and additionally take into account UNHCR guidelines on effective protection benchmarking. The Communication '*Improving Access to Durable Solutions*' (2004) put forward certain 'protection components' that could still provide some source of inspiration. In its comments to this 2004 Communication, ECRE has suggested the following list of items that should be in the content of benchmarks, comprising the basics of human rights and refugee law:<sup>12</sup>

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<sup>7</sup> European Pact on Immigration and Asylum of 24 September 2008, and COM (2009) 0266 final, *Tracking method for monitoring the implementation of the European Pact on Immigration and Asylum*

<sup>8</sup> Trauner F. and Kruse I., (2008), EC visa facilitation and readmission agreements: a new standard EU foreign policy tool? *European Journal of Migration and Law*, 10 (4), 411-438

<sup>9</sup> See also Parliamentary Assembly of the Council of Europe (PACE) Report '*Readmission Agreements: a mechanism for returning irregular migrants*', Committee on Migration, Refugees and Population, 17 March 2010 (Rapporteur: Tineke Strik).

<sup>10</sup> COM (2011) 76 final

<sup>11</sup> COM (2011) 743 final, p.3

<sup>12</sup> ECRE Comments on the Communication on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin '*Improving Access to Durable Solutions*' COM(2004) 410 final, pp.7-8

- Accession and adherence to the refugee instruments, including regional refugee instruments as well as other human rights and international humanitarian law treaties
- Documentation and legal status in the host country (where a state permanently denies a refugee access to any form of legal status, it violates its Refugee Convention obligations, even if it refrains from refoulement. For long-standing refugees, such a State cannot be said to offer effective protection)
- Protection from torture, inhumane or degrading treatment
- Protection from generalised and targeted violence
- Guarantee of non-refoulement
- Access to fair status determination or prima facie recognition
- Freedom of movement within the State of asylum
- The rights to freedom of thought, conscience, religion or belief, opinion or expression
- Right to seek employment and engage in income earning activities
- Right to an adequate standard of living, which includes the ability to sufficiently provide and care for oneself and one's family
- Freedom from discrimination
- Freedom from arbitrary detention
- Right to education - at a minimum, primary education for school-aged children, and, ideally, secondary school education and access to skills training programmes for young people and adults
- The provision of shelter, food/nutrition, health care, water and sanitation
- Other rights provided by the 1951 Convention relating to the Status of Refugees
- Access to family reunification
- Freedom from forced recruitment
- Special consideration and services for vulnerable groups – women, children and the disabled
- Access to a timely durable solution

ECRE recommends that these benchmarks are also effectively and regularly monitored as conditions may change over time.

At the same time, it is important to maintain that visa facilitation or liberalisation should not pose any obstacles to the possibility for nationals of the partner country to seek asylum in Europe, should such circumstances arise. Humanitarian visas and alternative forms of access to protection should also be considered for both nationals and third country nationals.

ECRE also recommends that the **monitoring** of readmission implementation is ensured through dedicated structures (be it in the form of the Joint Readmission Committees or committees monitoring the Mobility Partnership implementation) and that **NGOs and international organisations are consulted**, in order to provide information on the situation on the ground and protection standards, as conditions may change after concluding the readmission agreement.

In addition, a crucial point in the discussion is to clarify what exactly becomes 'conditional' in cooperation for readmission. It should be clear that the 'conditional' element put forward here is the offer for visa facilitation, without necessarily putting into question the broader cooperation on migration and asylum or financial support in this regard. The relationship between visa policy and readmission in the GAMM should generally be seen with caution, as the GAMM is supposed to have a broader objective than just rewarding Europe's gatekeepers with easier visas.

In terms of funding, the creation of an external dimension strand within the Home Affairs Asylum and Migration Fund (AMF) under the Multiannual Financial Framework 2014-2020 provides an appropriate source for actions in the area of readmission; at the same time, actions need also to be

coherent with funding for migration management under the external aid instruments.<sup>13</sup>

More broadly, ECRE is concerned about the fact that the 'more for more' principle is based exclusively on the countries' cooperation for readmission and for preventing irregular migration. Such an emphasis on migration deterrence undermines the effort to make the GAMM a broad cooperation framework with third countries. Instead, partner countries should be rewarded for performing well in various areas, which may not necessarily be at the top of EU security priorities.

- The EU and Member States should first and foremost consider the human rights situation and the availability of a well-functioning asylum system in the third country before entering into negotiations and implementing readmission agreements with that country
- There should always be safeguards against refoulement for persons whose rights or life may be at risk
- Benchmarks should be in place based on international human rights and refugee law, and they should be regularly monitored
- NGOs and international organisations should be consulted in the monitoring of readmission implementation

## **GAMM politics and tools**

Another point of departure from the previous GAM is that the Migration Dialogues with third countries will be **integrated in political dialogues** and regional processes. They will also be standardised in form (steering structure, action plans, monitoring mechanisms etc)<sup>14</sup> while EU Delegations in third countries will be more actively involved. ECRE welcomes this approach, which moves cooperation on migration from a parallel and rather invisible space to the centre of EU-partner country political dialogues and partnership agreements, this way gaining in credibility and leverage. At the same time, considering that these dialogues will be complemented by a 'support package' of projects, overlaps must be avoided with the long established strands of country, cross-border and regional capacity building under the various development instruments.

The Communication acknowledges that the GAMM will be **complementary to foreign policy and development**. ECRE wishes to underline that this needs to be supported by a concrete strategy. Considering the current fragmentation of migration issues externally between development cooperation, neighbourhood policy, enlargement and foreign relations, and home affairs, closing this gap needs a coordination structure that connects policies, actors and funding. The same argument for the need to develop a mechanism to ensure coherence has also been put forward in the discussions on the Multiannual Financial Framework 2014-2020 and the creation of an external dimension within the AMF. Coherence has to be ensured between the AMF and the external aid instruments, to avoid overlaps but also ensure that actions funded under the Home funds do not contradict objectives under the development instruments.<sup>15</sup> Finally, this coordination mechanism would also need to ensure coherence between Member States' bilateral actions and EU action in the area of migration and asylum.

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<sup>13</sup> For comments on the MFF proposals see *Civil society statement and recommendations on the future of EU funding for migration and asylum 2014-2020*, March 2012

<sup>14</sup> Political dialogues are strategic partnerships, association agreements, partnership and cooperation agreements, joint cooperation councils, and JLS subcommittees, depending on region, foreign relations and financial instruments.

<sup>15</sup> See Civil society statement, March 2012

Previously, the GAM was mostly driven from Brussels, the Commission and some Member States interested, while EU Delegations had little to do with it. The GAMM will now be implemented jointly by the Commission, Member States and the EEAS. The role, and scope of EEAS action in migration and asylum still remains undefined, but there is potentially a significant role to be played by Europe's foreign policy in promoting a rights-based approach to migration and asylum externally.

The role of **regional processes** (Budapest Process, Prague Process, Rabat Process in West Africa, Southern Mediterranean, Eastern Partnership, EU-Africa Partnership MME, EU-ACP dialogue) will need to be reviewed. In the past few years, these rather informal processes have been the driving force behind the external dimension of migration, filling the gap for an, albeit limited dialogue with third countries. Their place is still maintained in the new GAMM and seen as complementary to country-level dialogues. A couple more regional dialogues are also added to the long list (a process for the Horn of Africa and a Brussels-based forum to discuss EU-Asia dialogue). Such non-binding gatherings provide a space for information exchange and even though they can not substitute for policies, they have the potential to initiate a discussion with countries that do not see migration and asylum issues as a priority.

Other GAM tools, such as **migration profiles** and **migration missions** are also maintained, and aim to serve these migration dialogues. It is however disappointing to see that the new approach does not go any further in defining their scope, or build on the experience gained so far. While often publicised as flagship of EU policies in the external dimension of migration, these tools have been ad hoc or too informal to have an impact. There is scope to develop Migration Profiles into something more operational and regular, directly linking with capacity building in third countries in the area of data collection and policy analysis. Migration missions, on the other hand, bring senior officials from Member States to meet informally with the authorities in third countries; the informal character of the visit has the advantage that it can initiate a dialogue and unlock certain issues. Migration missions could be multiplied and become thematic, with terms of reference defining missions on specific topics, or missions for emergency situations where Member States could visit and see with their eyes where the needs for assistance and cooperation lie. Local civil society and other stakeholders would also need to be included in the programme of migration missions. In the area of refugee protection this is particularly relevant. Tunisia and Egypt in 2011 was a case in point where such joint missions by Member States to witness assistance and protection needs for the displaced could have had an impact.

- A clear strategy and coordination tool needs to be created to ensure coherence between policies and funding for migration and asylum in development, humanitarian aid and the external dimension of home affairs.

- The Commission should take stock of the function of regional processes and draw a strategy for the future, setting specific objectives and making better use of their potential. The rights of migrants and refugee protection should also be included as priority topics in these processes.

- Migration missions could be better used strategically, including also in emergency situations, bringing Member States to witness assistance and capacity building needs in the short and medium term.

## Promoting refugee protection globally

Previously, refugee protection was associated with the GAM as a horizontal theme. In the new GAMM refugee protection is included as one of its four priorities, in the context of a comprehensive approach to migration. ECRE believes that this shows a good understanding of the interlinkages between migration and asylum, especially in relation to mixed migration flows and the need for coherence between policy areas. At the same time, the Communication makes a number of policy propositions that are worth exploring in further detail.

First of all, the Communication sets the ambitious goal for the EU to be **a global player**, '*among the forerunners in promoting global responsibility sharing based on the Geneva Convention and in close cooperation with UNHCR*'.<sup>16</sup> Such an ambition, definitely welcome, goes at the same time beyond the migration management agenda of the Global Approach, requiring a political commitment from the Union and its Member States individually to show solidarity with third countries and regions hosting most of the world's refugees.

It is also related to the role the **EEAS** should play in promoting the protection and respect for human rights universally. The Lisbon Treaty sees human rights as a priority, mainstreaming them in all areas of EU external policy, from the political dialogues with third countries to development policy or EU action in multilateral fora.<sup>17</sup> The High Representative and the EEAS are responsible for promoting human rights, guaranteeing full application of the Charter of Fundamental Rights in all aspects of the Union's external actions, and consistency between external action and other policies.<sup>18</sup> The High Representative and the EEAS also contribute to the programming and management of the geographic and thematic external aid instruments.<sup>19</sup>

ECRE believes that the High Representative and EEAS can help **frame the debate around asylum** differently, moving away from the security discourse towards human rights. Third countries' obligations for protection, for example, could be more appropriately accommodated in the context of human rights dialogues and monitoring, rather than management of irregular migration – whilst ensuring coordination and coherence between the two. Refugee protection and protection of the rights of migrants could have a dedicated chapter in the EU Human Rights Guidelines.<sup>20</sup> The EEAS should also promote new thinking on global collective action; there is potential resting in European collective diplomatic action to address global issues such as human rights and refugee protection, and this should be unlocked. The EEAS should also encourage joint action by the EU in the UN.

A relevant point here is the provision in the Stockholm Programme that the European Union should seek accession to the **Geneva Convention** and its 1967 Protocol.<sup>21</sup> ECRE believes that signing the Convention as a Union has an important symbolic and political value, as it will reaffirm the EU's commitment to refugee protection, increase the Union's influence in discussions on the future of international refugee protection, and enhance understanding and respect for international

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<sup>16</sup> COM (2011) 743 final, p.5

<sup>17</sup> Article 21 TEU stipulates that the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law (...). The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph.

<sup>18</sup> Ar.21 (3)

<sup>19</sup> Draft Council Decision establishing the organisation and functioning of the European External Action Service, Brussels 25 March 2010

<sup>20</sup> EU guidelines are not legally binding, but because they have been adopted at ministerial level, they represent a strong political signal that they are priorities for the Union. Guidelines are pragmatic instruments of EU Human Rights policy and practical tools to help EU representations in the field better advance our Human Rights policy. See [http://eeas.europa.eu/human\\_rights/guidelines/index\\_en.htm](http://eeas.europa.eu/human_rights/guidelines/index_en.htm)

<sup>21</sup> Stockholm Programme, 2 December 2009, p.69



protection at Member State level. It can also impact on the external dimension and actions undertaken by the EU in third countries.

ECRE has argued for the development of a **comprehensive and holistic European approach to refugee protection**, that ensures access to and effective protection in Europe as well as supports protection capacity in regions of origin to deliver solutions locally, in the spirit of solidarity and responsibility sharing.<sup>22</sup> The majority of the world's refugees live in the developing world, close to the country they are fleeing. Developing countries face significant challenges in the effort to assist them, in a context where their own nationals often do not enjoy basic rights. European countries have a role to play in assisting third countries hosting refugees. Supporting protection capacities increases the possibility to access durable solutions, such as local integration. Better access to protection in third countries also enlarges the asylum space and contributes to the successful implementation of Member State and EU development cooperation programmes. For all these reasons, it is fundamental that EU policies promote and support protection capacities in regions of origin and transit. **Benchmarks** can contribute to define effective protection in third countries more concretely based on international refugee and human rights law (see previous section).

In fact, much is already pursued through EU **external cooperation and humanitarian aid** policies and instruments, lacking however consistency, coherence, visibility, and more importantly, a clear strategy. Despite recent efforts to promote policy coherence for development – now a Treaty obligation –<sup>23</sup> there are still no clear and common policy objectives for the protection of refugees and IDPs connecting the various external aid policies and instruments.

Moreover, any cooperation to develop protection capacities in third countries should be based on **responsibility sharing**, and should not result in shifting European responsibilities to third countries. The possibility to seek asylum in the region does not replace Member States' obligations to process applications and to grant refugee protection.

- ECRE believes that external relations and cooperation is the right place to accommodate efforts to promote durable solutions, and what is needed is not a different policy framework but instead, that actions and funding are guided by clear EU policy objectives for refugee protection globally.

- The High Representative and the EEAS can play an important role in promoting a human rights approach, where asylum could also be situated. Asylum should be included in human rights dialogues and monitoring. Refugee protection and protection of the rights of migrants should have a dedicated chapter in the EU Human Rights Guidelines.

Much of what is described in the GAMM Communication as comprehensive approach to refugee protection has already been envisaged by the Commission itself back in 2003, as part of the then plans to develop a comprehensive European asylum policy that would enhance protection both internally and in solidarity with third countries.<sup>24</sup> This was at a time prior to the building of a Common European Asylum System (CEAS), the GAM and to the birth of the EEAS. Some of the

<sup>22</sup> See ECRE Comments on COM (2004) 410 final; ECRE Comments on the Communication from the Commission to the Council and the European Parliament *Towards a more accessible, equitable and managed asylum systems* (COM(2003) 315 final; ECRE *Way Forward Paper* Protection in Third Countries (2005)

<sup>23</sup> EU commitment to Policy Coherence for Development (PCD) is founded on Article 208(1) TEU which stipulates that Union and Member States' policies shall „complement and reinforce each other; in addition 'the Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries' (Ar. 208 (2)). Article 210(1) TEU lays down duties of consultation and cooperation to attain this objective.

<sup>24</sup> COM (2003) 315 final *Towards a more accessible, equitable and managed asylum systems*, COM (2004) 410 final, Presidency Conclusions, Thessaloniki European Council, 19 and 20 June 2003

ideas proposed back then have now materialised, namely the Regional Protection Programmes (RPP) and resettlement, albeit not in the spirit proposed in the Communications and Council Conclusions, as will be explained below. Meanwhile, the notion of a comprehensive European refugee protection policy was gradually pushed to the side and efforts focused almost entirely on building the CEAS. EU policy for refugee protection became synonymous for a policy for asylum *in Europe*, and *access to* it. The GAMM now attempts to make a stronger link to protection in third countries, as part of a migration management agenda.

Conceived back in 2003-2004 and tabled in the Communication of 2005, the **Regional Protection Programmes (RPP)** were first envisaged as a wide-ranging 'tool box' policy, a framework of actions to be pursued by the Commission and Member States in regions of origin and transit in order to enhance capacities and conditions that support durable solutions.<sup>25</sup> In reality, they never reached these ambitions. Two phases of RPP implementation (2006-2010, and 2010 to present) covering Eastern Europe, Tanzania, the Horn of Africa and now, North Africa, have so far lacked a policy vision. Administrative shortcomings, lack of coherence with humanitarian aid and development cooperation in the same countries, lack of visibility, and more importantly, lack of a clear strategy have led to a set of ad hoc, small-scale programmes implemented by UNHCR and NGOs. Contrary to what was foreseen in the Communication, the regional character of these programmes has been weak and the countries' authorities have not come on board. In addition, the RPP were supposed to contain a resettlement component that would balance off protection in the region with offers by Member States to also receive some of the regions' most vulnerable refugees. Member States, however, did not come forward with offers specifically for RPP regions, while a joint EU programme, which could have provided financial support for this, did not see the light of day until March 2012.<sup>26</sup>

The GAMM communication proposes to strengthen the RPP and link them to development and disaster reduction programmes in countries and regions to ensure coherence. ECRE welcomes these suggestions and believes that they are steps in the right direction. The RPP are not meant to support medium and long term solutions for refugees and the local communities, or address the root causes that force people to flee, and therefore they need to be coherent with the main strands of development cooperation. If there is a potential with the RPP, this does not rest with their scale, but with the possibility to zoom into a specific regional situation and reach out to various policies and tools to promote solutions.

The GAMM also proposes that the RPP are discussed in the political and migration dialogues. On the one hand, inclusion in migration dialogues could give the RPP a place in political and country cooperation which they are now lacking, and potentially increase the chances of getting the authorities of the third countries on board. This would require the EEAS and EU Delegations to be closely involved. On the other hand, going through the channel of migration dialogues bears certain risks: a close association between readmission, lying at the core of migration dialogues, and regional protection in the very same countries and regions may undermine the objective of developing asylum capacities and create the impression that asylum is instrumentalised for migration control and return. The existence of RPP should not become an excuse for Member States to shift their protection responsibilities to those regions, or to return persons in need of protection back to the regions. Therefore, as a matter of principle, capacity building efforts for protection in the region, such as the RPP, would need to be inscribed in a development rather than a migration management agenda, while maintaining close coordination. In addition, developing conditions that support effective protection may take years, and meanwhile human rights and protection standards may be far from adequate. Therefore, RPP programming and implementation need to relate closely to human rights dialogues and monitoring.

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<sup>25</sup> COM (2003) 315 final, Council Conclusions November 2004, COM (2005) 388 final *on regional protection programmes*

<sup>26</sup> Council decision 6444/12 amending Decision 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General Programme Solidarity and Management of Migration Flows and repealing Council Decision 2004/904/EC, 8 March 2012

- The Commission should take stock of RPP implementation and draft a strategy for the future, setting their scope, objectives and limits. Monitoring and evaluation tools should also be developed
- RPP should be coordinated with migration dialogues and human rights dialogues, safeguarding that the purpose of protection in the region is to promote durable solutions and not to strengthen migration control.
- Any capacity building efforts for protection in the region, such as the RPP, would need to be inscribed in a development rather than a migration management agenda, while maintaining close coordination.

Being one of the three durable solutions, **resettlement** makes the link between protection in third countries and access to asylum in Europe. In terms of programming, resettlement is embedded in the Member States' national asylum programmes. After being stalled for years, the Joint Resettlement Programme was finally adopted in March 2012 for the year 2013 with common priorities that Member States can jointly pursue (with some financial support) by pledging for specific refugee groups. By joining efforts, Member States can give meaning to the strategic use and impact of resettlement in areas where EU action can have an added value. The MFF for 2014-2020 also foresees a Union Resettlement Programme with common priorities, financial incentives and a more concrete pledging mechanism. Among the common priority groups identified are refugees from Regional Protection Programmes, as mentioned above.<sup>27</sup>

ECRE has always advocated for the establishment of a **joint EU resettlement programme** that will contribute to increase the numbers and provide better quality resettlement in Europe. The relation between RPP and resettlement makes sense, in that the EU should not only support countries to develop a functioning asylum system and ensure standards for protection, but also accompany these efforts with a gesture of solidarity to receive some of the most vulnerable persons in its territory. ECRE welcomes the proposal for a policy dialogue to be established with Member States prior to the setting of priorities, as foreseen in the MFF 2014-2020 proposal, and highlights the need to ensure that resettlement efforts always target the most vulnerable groups in alignment with priority situations identified by UNHCR. In relation to the GAMM Communication, ECRE welcomes the recommendation made to increase resettlement to Europe and believes that it is useful that the GAMM framework generally maintains in its agenda references to support asylum and durable solutions.

ECRE also welcomes the recommendation to involve **EASO** more closely in capacity building in third countries, particularly with regards to the RPP and resettlement. This is in line with the EASO 2012 Work Programme, according to which EASO should develop priorities and actions in the area of resettlement and draft an Action Plan in the External Dimension.<sup>28</sup> The Action Plan could translate the GAMM objectives in the area of asylum into operational objectives. EASO could contribute to compile information on past and current projects funded under thematic and geographic instruments and map current activities funded by the EC in the external dimension of asylum, in collaboration with the European Commission. The Agency could also contribute to create a methodology and tools for data collection, documentation and analysis on capacity building for asylum. In the area of resettlement, EASO could foster data collection and information

<sup>27</sup> COM (2011) 749 final, Building an open and secure Europe; the home budget for 2014-2020 and COM (2011) 751 Proposal for a Regulation establishing the Asylum and Migration Fund

<sup>28</sup> EASO Work Programme 2012, European Asylum Support Office, September 2011  
[http://ec.europa.eu/home-affairs/policies/asylum/docs/easo/EASO\\_2011\\_00110000\\_EN\\_TRA.pdf](http://ec.europa.eu/home-affairs/policies/asylum/docs/easo/EASO_2011_00110000_EN_TRA.pdf)

exchange, building on the work produced through past and current ERF funded projects, and integrate resettlement in practical cooperation networks, training and evaluation tools. The pool of experts to be used by the Agency could also include experts in capacity building for asylum, training on asylum procedures or the resettlement process. More importantly EASO should develop tools for regular coordination between Member States in resettlement, and ensure coherence between actions by Member States and the EC in the area of capacity building for asylum.

- ECRE welcomes the recommendation to enhance resettlement in the EU, and to strengthen the resettlement component in the RPP

- EASO could develop methodologies and tools for data collection and mapping of activities funded by the EC and Member States in capacity building for asylum and resettlement. EASO could also create a tool to ensure regular coordination between EC and Member States in resettlement. The pool of experts could also include experts in capacity building for asylum and resettlement

The two policies, RPP and resettlement, are usually described by the Commission and Member States as the main elements in the '**external dimension of asylum**', a notion that refers to cooperation with third countries with regards to refugee flows towards Europe, and the external aspects of access to asylum in Europe. This notion resonates with the overall GAMM logic of cooperation with third countries for migration flows affecting Europe, and in this respect there are meaningful connections to be made between asylum and the GAMM. At the same time, ECRE wishes to underline the importance for the EU to develop a broader, more comprehensive approach to refugee protection globally, which does not only focus on Europe and capacity building in relation to refugees coming to Europe, but instead supports durable solutions in the region in the context of development cooperation.

The GAMM communication also makes brief reference to global displacement issues, such as the need to address **statelessness** globally, the relation between **displacement and development**, the creation of an **international legal framework for IDPs** or **environmentally induced migration**, specifically regarding the need to support also by means of adaptation to the adverse effects of climate change. ECRE welcomes the fact that the GAMM acknowledges the relevance and importance of these issues. At the same time, there are certain limits as to whether the GAMM, a framework for cooperation on migration and mobility, is the appropriate framework to address them. As mentioned earlier, it remains ECRE's position that these issues and generally the development of protection capacities and support for the displaced should be accommodated in development policy and external relations. The GAMM should nevertheless be coherent with these objectives.

## Conclusion

In conclusion, the GAMM Communication's emphasis on mobility is perhaps the most significant change that can potentially shape the cooperation agenda with third countries. ECRE welcomes the emphasis on mobility and recommends that this should translate into migration channels for both skilled and unskilled labour. Certain changes aim to make the GAMM more political, notably the direct relation between migration dialogues and political dialogues. Other changes and recommendations in the Communication aim to display a sense of interconnectedness and coherence with various policy areas.

During the last five years, the Global Approach has been a loose conceptual framework aiming primarily to provide a response to Member States' security concerns about migration flows towards Europe. The new GAMM does not essentially depart from this logic, and this is clearly evident in the role given to readmission agreements. At the same time, the Commission's ambition '*to move the GAMM centrestage and make it the overarching framework for EU external migration policy*' complementary to foreign policy and development, also sees certain limits. An overarching framework would need to be able to address the root causes of migration and displacement, and enhance conditions that affect the lives of both migrants and the local communities. It would need to address the South-South dimension, namely inter- and intra-regional mobility. These are all areas that are and should be addressed through development cooperation.

More importantly, the GAMM can not substitute for the need for Europe to show political leadership in addressing the challenges in global migration and displacement. Europe should position itself as a global player in international migration governance and seize the moment to develop and promote a rights-based approach to migration globally. Such an approach should be accommodated in EU's development and foreign policy. The United Nations High-Level Dialogue on Migration and Development in 2013 can be a good opportunity for a strong and visionary European presence.

With regards to refugee protection, its inclusion as one of the four priorities in the new GAMM is welcome as a way to ensure coherence and better address the challenges arising from the asylum-migration nexus. At the same time, ECRE believes that there are certain difficulties and limits in terms of how far a migration and mobility management framework can accommodate capacity building for asylum in third countries without undermining or distorting the purpose of the latter. Instead, ECRE argues that Europe should develop a comprehensive and ambitious policy for refugee protection globally, that encompasses the CEAS and cooperation for protection in third countries. Durable solutions and capacity building for asylum need to be integrated in development with clear and consistent policy objectives. The EEAS has the potential to frame the debate around asylum differently, in the context of a European policy for human rights and protection globally. Finally, the credibility of EU actions to promote refugee protection and durable solutions in third countries also depends on whether Europe upholds its responsibilities for protection in its territory.